of new switch software, the development and maintenance of databases, and the hiring and training of new personnel.[285] We seek comment on these arguments, including specific information regarding the costs of compliance for CMRS OSPs.[286] To the extent that CMRS providers cannot distinguish calls made through aggregators from other calls, we further seek information regarding the costs of making the required identification and disclosures on a larger universe of calls.

104. Finally, PCIA argues that the OSP disclosure requirements are ill suited to CMRS operator services because, unlike in the wireline context, CMRS OSPs typically have no direct relationship with the end user and do not set the end user's rates. Rather, according to PCIA, the aggregator sets the customer's rates and bills the customer directly. Therefore, PCIA argues, information regarding the OSP's rates is of little value to the consumer, and OSPs do not have sufficient information to accurately disclose the rate that may be charged to any end user.[287] We seek comment on the billing practices that prevail in CMRS aggregator contexts, and on the variations that may exist in these practices. In particular, we seek information on whether, and under what circumstances, end users are billed by aggregators, OSPs, or both. To the extent that end users pay charges only to aggregators, we seek comment on whether aggregators set those fees independently or simply pass on the fees charged to them by OSPs. We also seek information on any fees or charges assessed by aggregators on top of the OSP's charges. In light of existing practices, we seek comment on whether, and under what circumstances, aggregators or OSPs are better situated to provide meaningful rate and billing information to end users. In addition, we seek comment on how CMRS aggregator arrangements compare with those in the wireline context, and how any differences affect the rules that may be appropriate to protect consumers.

105. Billing for Unanswered Calls. TOCSIA and our regulations forbid OSPs from billing for unanswered telephone calls in areas where equal access is available, and from knowingly billing for unanswered telephone calls in areas where equal access is not available.[288] PCIA asserts that this provision is unnecessary as applied to CMRS providers because standard industry practice is to begin accruing air time charges only when the call is connected, and there is no evidence that billing for unanswered calls has been a problem in the mobile telecommunications industry.[289] We seek comment about CMRS industry practices with respect to billing for unanswered calls and any variations in those practices. In particular, we seek information regarding what constitutes billable airtime and whether

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[285] *See* PCIA Petition at 47; PCIA *Ex Parte* at 3 and Attachment at 1.

[286] GTE and McCaw both provided estimates of how potentially expensive the original imposition of TOCSIA would be for CMRS providers. PCIA cited both GTE's 1993 $20 million estimate of the cost of compliance for the cellular industry and McCaw's 1994 extrapolation of this estimate to $100 million cost of compliance for the entire CMRS industry, without providing new figures. PCIA Petition at 47 (citing *GTE Reconsideration Petition* at 17 and McCaw Comments on the *Further Forbearance NPRM* at 5). These figures, however, are several years old, and presumably many of the costs at issue have already been incurred. We seek current information regarding the compliance costs presently faced by the CMRS industry.

[287] *See* PCIA *Ex Parte* at 2-3, 4, and Attachment at 1.

[288] 47 U.S.C. § 226(b)(1)(F-G); 47 C.F.R. § 64.705(a)(1-2).

[289] PCIA *Ex Parte*, Attachment at 1-2.

CMRS providers calculate airtime differently for customers who obtain service through aggregators than for other users of their networks.[290] Commenters should further address the cost of implementing and complying with this provision for CMRS calls made through aggregators. To the extent that CMRS providers cannot distinguish between public and other users of the network, commenters should address the costs of forgoing billing for unanswered calls for a larger set of users.

106. Call Splashing. Both TOCSIA and the implementing regulations forbid OSPs from engaging in "call splashing" or billing for a call that does not reflect the originating location of the call without the consumer's informed consent.[291] PCIA argues that this prohibition is unnecessary as applied to CMRS OSPs because these providers have not engaged in call splashing to the detriment of consumers, as evidenced by the lack of consumer complaints about the practice.[292] In particular, PCIA argues that because most mobile service providers charge distance-insensitive toll rates, call splashing by CMRS providers would not harm consumers or unfairly benefit carriers.[293] PCIA observes that the point of call origination has little meaning in the mobile context since callers frequently change location during the course of a communication.[294] PCIA further argues that broadband PCS providers cannot feasibly target users of aggregated services for call splashing because they have no way of distinguishing a rental phone from a private phone.[295]

107. As discussed above, the present record is insufficient to support forbearance based on PCIA's arguments.[296] We therefore seek further comment on PCIA's arguments and on the costs and benefits of applying the call splashing prohibition to CMRS. In particular, we seek comment on whether CMRS OSPs have any history of call splashing to the detriment of consumers, and on whether situations exist or could arise where CMRS OSPs could have an incentive to engage in call splashing that would harm consumers. In this regard, we request comment on the prevalence of distance-insensitive billing in CMRS markets, how this billing practice affects CMRS OSPs' incentives

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[290] We note that in another proceeding, a cellular service provider has asked us to declare that "call initiation" in the CMRS context occurs when the customer activates the phone to place or receive a call. *See* Southwestern Bell Mobile Systems, Inc. Petition for a Declaratory Ruling Regarding the Just and Reasonable Nature of, and State Law Challenges to, Rates Charged by CMRS Providers When Charging for Incoming Calls and Charging for Calls in Whole-Minute Increments at 3, 11-12 (filed Nov. 12, 1997).

[291] 47 U.S.C. § 226(b)(1)(H-I); 47 C.F.R. § 64.705(a)(3-4). "Call splashing" means the transfer of a telephone call from one provider of operator services to another such provider in such a manner that the subsequent provider is unable or unwilling to determine the location of the origination of the call and, because of such inability or unwillingness, is prevented from billing the call on the basis of such location. 47 U.S.C. § 226(a)(3); 47 C.F.R. § 64.708(c).

[292] PCIA Petition at 43; *see also, e.g.*, CTIA Comments on *Further Forbearance NPRM* at 7; GTE Comments on *Further Forbearance NPRM* at 6; In-Flight Comments on *Further Forbearance NPRM* at 5.

[293] *See* PCIA Petition at 45; PCIA *Ex Parte* at 2 and Attachment at 3.

[294] PCIA *Ex Parte*, Attachment at 3.

[295] PCIA Petition at 46.

[296] *See* para. 86, *supra.*

to engage in call splashing and the potential for call splashing to harm consumers, and how these conditions compare with the situation in wireline services. In addition, we seek information on the costs to CMRS OSPs of complying with the call splashing prohibition for calls made through aggregators and, to the extent that CMRS providers cannot distinguish between customers of aggregators and other users, the costs of complying with this prohibition on other calls as well.

108. OSP Publication of Changes in Services. Under TOCSIA, the Commission is required to establish a policy for requiring providers of operator services to make public information about recent changes in operator services available to consumers.[297] Pursuant to that directive, we have required OSPs to regularly publish and make available at no cost to inquiring consumers written materials that describe any recent changes in operator services and in the choices available to consumers in that market.[298] PCIA argues that CMRS providers have no basis for issuing such reports because they are only incidentally and involuntarily OSPs.[299] We seek comment on the costs and benefits of requiring CMRS OSPs to publish regular reports of their changes in service in light of the nature of the services provided, the level of abuses, and carriers' customary disclosure practices. We are also interested in how this cost-benefit analysis compares with the analysis for wireline OSPs. Commenters should particularly consider whether the benefit of these reports to consumers may vary for different CMRS aggregator arrangements, and therefore whether it may make sense to modify or forbear from enforcing the rule only for certain types of arrangements.

109. Routing of Emergency Calls. TOCSIA requires the Commission to establish minimum standards for OSPs and aggregators to use in the routing of emergency telephone calls.[300] Under our rules implementing this provision, OSPs and aggregators are required to ensure immediate connection of emergency telephone calls to the appropriate emergency service of the reported location of the emergency, if known, and if not known, of the originating location of the call.[301] More recently, the Commission has promulgated requirements specifically governing the routing and handling of emergency 911 calls by cellular, broadband PCS, and SMR licensees that offer real-time, two-way switched voice service that is interconnected with the public switched network and utilize an in-network switching facility which enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.[302] These requirements include:

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[297] 47 U.S.C. § 226(d)(3)(B).

[298] 47 C.F.R. § 64.707.

[299] PCIA *Ex Parte*, Attachment at 3.

[300] 47 U.S.C. § 226(d)(3)(A).

[301] 47 C.F.R. § 64.706.

[302] 47 C.F.R. § 20.18; *see* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 18676 (1996) (*E911 Order*); *Memorandum Opinion and Order*, 12 FCC Rcd. 22665 (1997) (*E911 Reconsideration*), *further recon. pending.*

- covered carriers must process and transmit to the designated Public Safety Answering Point (PSAP) all 911 calls made from wireless mobile handsets, including calls initiated by roamers;

- during Phase I of implementation and deployment, covered carriers must provide the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their system to the designated PSAP through the use of Automatic Number Identification (ANI) and Pseudo-ANI.[303] These capabilities will allow the PSAP attendant to contact the caller if the 911 call is disconnected;

- during Phase II of implementation and deployment, covered carriers must achieve the capability to identify the latitude and longitude of a mobile unit making a 911 call within a radius of no more than 125 meters, using Root Mean Square methodology (which equates to a success rate of approximately 67 percent to 75 percent).

110. PCIA asserts that CMRS aggregators' and OSPs' obligations with respect to emergency services are spelled out in the Commission's E911 rules, which supersede section 64.706.[304] The record, however, is almost totally devoid of comments addressing the emergency call routing obligation. We seek comment as to whether section 64.706 is appropriately applied to CMRS aggregators and OSPs, in light of our E911 rules. Commenters should specifically address the costs and benefits of applying section 64.706 in the CMRS context. In addition to addressing the impact of section 20.18, commenters should consider whether section 64.706 remains necessary and appropriate as applied to any CMRS aggregators and OSPs that are not covered by the E911 rule, or whether those providers that are not covered by the E911 rule should be excluded from any emergency call routing obligation because they are incapable of handling emergency calls.[305]

B. Forbearance From Other Statutory and Regulatory Provisions.

111. In the *CMRS Second Report and Order*, the Commission classified all mobile radio services as either commercial mobile radio service (CMRS) or private mobile radio service (PMRS). The statutory definition of CMRS is "any mobile service . . . that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public."[306] In the *CMRS Second Report and Order*,

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[303] "Pseudo-ANI" means a number, consisting of the same number of digits as ANI, that is not a North American Numbering Plan telephone directory number and may be used in place of an ANI to convey a special meaning. The specific meaning assigned to the pseudo-ANI is determined by agreements, as necessary, between the telephone system originating the call, intermediate telephone systems handling and routing the call, and the destination telephone system. *E911 Reconsideration*, 12 FCC Rcd. at 22715, ¶ 103.

[304] PCIA *Ex Parte*, Attachment at 3.

[305] *See E911 Order*, 11 FCC Rcd. at 18716-18, ¶¶ 80-83; *E911 Reconsideration*, 12 FCC Rcd. at 22700-05, ¶¶ 70-83.

[306] *See* 47 U.S.C. § 332(d)(1).

we concluded that CMRS includes the following former private radio services: SMR licensees that provide interconnected service, private carrier paging, and all for-profit interconnected services offered by business radio service and 220-222 MHz band licensees (we excepted, however, private paging systems that service the licensee's internal communications needs but do not offer for-profit service to third-party customers).[307] We concluded that CMRS also includes the following common carrier services: cellular service, all air-ground services, common carrier paging, all mobile telephone services and resellers of such services, offshore radio service, public coast stations and providers of mobile satellite service directly to end users.[308] We also decided to treat both broadband and narrowband PCS as CMRS on a presumptive basis, but to allow PCS systems to be treated as PMRS if a carrier makes a showing sufficient to overcome this presumption.[309] In the *CMRS Second Report and Order*, we determined to forbear from applying sections 203, 204, 205, 211, 212 and 214 of Title II of the Communications Act to any service classified as CMRS.[310] While we determined to continue enforcing the remaining sections of Title II with respect to CMRS providers, we announced that we would undertake a rulemaking proceeding to evaluate the possibility of additional regulatory relief from Title II for smaller entities that had complained of the disproportionate burden the current regulations imposed upon them.[311] We subsequently issued the *Further Forbearance NPRM* to initiate that rulemaking.

112. The Commission received numerous comments and reply comments on the *Further Forbearance NPRM*, but the passage of the Telecommunications Act of 1996 made sweeping changes which not only affected all consumers and telecommunications service providers, but also greatly expanded the Commission's forbearance authority. Section 332(c) authorizes the Commission to forbear from applying most provisions of Title II to any CMRS "service or person."[312] Under our section 10 authority, by contrast, we may forbear from applying almost any regulation or provision of the Act to any "telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of their geographic markets."[313] The 1996 Act also added section 11, which directs us biennially to review all of our telecommunications regulations and repeal or modify any regulations that we determine are no longer necessary in the public interest as the result of meaningful economic competition between providers of

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[307] *See CMRS Second Report and Order*, 9 FCC Rcd. at 1448-54, ¶¶ 82-99.

[308] *Id.* at 1454-58, ¶¶ 100-109; *see* 47 C.F.R. § 20.9. At the time of adoption of this regulation, we determined that we would treat as CMRS for-profit subsidiary communications services transmitted on subcarriers within the FM baseband signal that provide interconnected service, but we would use our discretion to determine whether we would treat the provision of space segment capacity to other than end users by satellite licensees and other entities as common carriage. *CMRS Second Report and Order*, 9 FCC Rcd. at 1457-58, ¶¶ 108-109.

[309] *See* 47 C.F.R. § 20.9(b).

[310] *CMRS Second Report and Order*, 9 FCC Rcd. at 1475-90, ¶¶ 164-213.

[311] *Id.* at 1419, 1511, 1515, ¶¶ 17, 272, 285. *See also* Separate Statement of Commissioner Andrew C. Barrett.

[312] 47 U.S.C. § 332(c)(1).

[313] 47 U.S.C. § 160(a).

service.[314] Because these legal changes and changes in the telecommunications marketplace have made portions of the record in the *Further Forbearance NPRM* stale, we terminate that proceeding and seek new comments regarding forbearance from applying any regulation or provision of the Act to wireless telecommunications carriers licensed by the Commission. Such carriers include telecommunications carriers licensed under Part 21 (domestic public fixed radio services), Part 22 (public mobile radio services), Part 24 (personal communications services), Part 90 (private land mobile radio services),[315] and Part 101 (fixed microwave services)[316] of our rules.[317]

113. We believe the goals we identified in the *CMRS Second Report and Order* mirror those set for us by Congress in the 1996 Act: reduce the regulatory burden upon, and foster vigorous and fair competition among, telecommunications providers.[318] We are continually striving to meet those goals. For example, our decision to forbear from applying tariffing requirements in sections 203, 204, and 205 to CMRS providers significantly reduced the filing burdens placed upon such providers.[319] Continuing this trend, we recently granted the FCBA's forbearance petition and that portion of PCIA's petition relating to *pro forma* transfers and assignments, subject to several exceptions, eliminating the requirement that telecommunications carriers licensed by the Wireless Telecommunications Bureau obtain prior Commission approval before consummating *pro forma* transactions, *i.e.*, transactions that do not constitute a substantial change of control.[320] As we have stated in other proceedings, however, the decision to forbear from enforcing statutes or regulations is not a simple decision, and must be based upon a record that contains more than broad, unsupported allegations of why the statutory criteria are met.[321]

114. Section 332(c) and section 10 differ in scope, yet set forth similar three-pronged tests that must be met in order for us to exercise our forbearance authority. Since we issued the *Further Forbearance NPRM* prior to the passage of section 10, we seek comment as to whether the differences

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[314] 47 U.S.C. § 161.

[315] Although Part 90 governs "private land mobile radio services," certain SMR, paging, and other service providers regulated under Part 90 have been classified as CMRS providers, and therefore fall within the definition of "telecommunications carrier" under the Act.

[316] Part 101 governs both common carrier and private fixed point-to-point microwave services. However, only common carrier microwave licensees are telecommunications carriers eligible for forbearance under this Notice.

[317] However, licensees governed by these rule parts who do not meet the definition of "telecommunications carrier" (*e.g.*, public safety and private microwave licensees) are beyond the scope of our section 10 forbearance authority, and therefore are not subject to this Notice.

[318] *CMRS Second Report and Order*, 9 FCC Rcd. at 1418-19, ¶ 16.

[319] *See id.* at 1475-81, ¶¶ 165-82; H.R.Rep. No. 111, 103d Cong. 1st Sess. at 259-60 (1993).

[320] *FCBA Order*, 13 FCC Rcd. at 6299, ¶ 9.

[321] *See* Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities, *Memorandum Opinion and Order*, 13 FCC Rcd. 2627 (Comm. Carr. Bur. 1998). *See also CAP Forbearance Order*, 12 FCC Rcd. 8596.

in language between section 332(c) and section 10 necessitate a departure from the criteria we enunciated in the *Further Forbearance NPRM* as a test for whether we would use our authority to forbear. These criteria are: (1) how the relevant statutory forbearance test and in particular the cost/benefit analysis we associate with the last prong of the test apply to the provision sought to be forborne from, (2) how forbearance from applying the provision would enhance future CMRS competition, (3) how Congressional intent underlying the provision would be affected, (4) how forbearance for particular types of CMRS providers would comport with regulatory symmetry and (5) whether there are other factors or alternatives we should consider in classifying CMRS for further forbearance purposes.[322] We further ask, since our authority under section 332(c) was limited to deregulation of commercial mobile services, whether we should extend any forbearance pursuant to section 10 to wireless carriers other than those classified as CMRS, *e.g.*, wireless competitive local exchange carriers (CLECs), in order to promote their role in providing competition in the local exchange market.

115. If commenters seek forbearance from particular statutory provisions or regulations, we ask them to primarily focus their analysis on whether forbearance is warranted under the three-pronged test of either section 332 or section 10. In connection with the third prong of the test, the public interest standard, commenters should show whether the costs incurred by carriers to comply with particular provisions outweigh the benefits to the public to be gained in applying them, as well as whether forbearance from particular statutory provisions would enhance future competition from a diversity of entities and thus tend to justify a finding that forbearance served the public interest. It would also be useful for commenting parties to consider and comment upon: (i) the original purpose of the particular rule in question; (ii) the means by which the rule was meant to further that purpose; (iii) the state of competition in the relevant market at the time the rule was promulgated; (iv) the current state of competition as compared to that which existed at the time of the rule's adoption; (v) how any changes in competitive market conditions between the time the rule was promulgated and the present might obviate, remedy, or otherwise eliminate the concerns that originally motivated the adoption of the rule; and (vi) the ultimate effect forbearance may have on consumers.[323]

116. We also seek comment on whether there exist, within CMRS and other wireless telecommunications markets, types of providers for which application of a particular statutory or regulatory provision will either pose undue costs or yield no benefits to the public. For example, if the costs of regulation are fixed, smaller providers could be more likely than other types of providers to be burdened by the costs of regulation. We believe two factors of the public interest test that we have proposed to apply under section 332(c) can serve to guide our determinations in this area.[324] The first is whether differential costs of compliance with particular laws or regulations make forbearance appropriate for particular types of providers. The second is whether the public interest benefits from application of particular provisions vary among the different types of providers.

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[322] *Further Forbearance NPRM*, 9 FCC Rcd. at 2165, ¶ 8.

[323] *See* 1998 Biennial Review -- Broadcast Ownership Rules, MM Docket No. 98-35, *Notice of Inquiry*, FCC 98-37 (rel. March 13, 1998) (Statement of Comm'r Harold W. Furchtgott-Roth).

[324] *See Further Forbearance NPRM*, 9 FCC Rcd. at 2165. ¶ 8.

117. In addition, we ask interested parties to comment on how forbearance for particular types of providers would comport with the goal of regulatory symmetry,[325] bearing in mind that our forbearance authority permits different regulation of different providers.[326] Specifically, we seek comment on whether limiting forbearance to only some CMRS or other wireless telecommunications carriers would undermine regulatory symmetry and the regulatory scheme established in the *CMRS Second Report and Order*.

118. Finally, we ask interested parties to suggest any other factors or alternatives that we should consider when evaluating forbearance petitions affecting telecommunications services or providers licensed or regulated by the Wireless Telecommunications Bureau.

VI. CONCLUSION

119. We find, based on the record before us, that the section 10 forbearance standard is not satisfied for sections 201 and 202 of the Act and 47 C.F.R. § 20.12(b) (the resale rule) with respect to broadband PCS and other CMRS providers, and deny PCIA's request to forbear from requiring broadband PCS providers to comply with these provisions. We also find that the section 10 forbearance standard is not satisfied with respect to the requirement that broadband PCS and other CMRS providers obtain section 214 authorization for providing international services. Forbearance is, however, warranted from the requirement that these carriers file tariffs for their international services, except on affiliated routes, and we find that this forbearance should be extended to all CMRS providers. Forbearance is also warranted from the provisions of TOCSIA that require CMRS aggregators to provide unblocked access and related provisions, as well as the requirement that CMRS OSPs file informational tariffs. We find, however, that the factual record is insufficient to support forbearance from enforcement of the other provisions of TOCSIA at this time, and we solicit further information in the Notice of Proposed Rulemaking that we hope will provide a basis for determining whether to forbear from applying other provisions of TOCSIA in the future.

120. We also find that GTE has failed to raise any new facts or legal arguments in support of its contention that TOCSIA does not apply to certain activities of its mobile affiliates, and therefore we deny its Petition for Reconsideration.

121. We also dismiss the Notice of Proposed Rulemaking entitled *Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers* because the record no longer reflects our expanded forbearance authority. The Notice of Proposed Rulemaking we issue today seeks comment regarding additional forbearance from regulation in wireless telecommunications markets.

VII. ORDERING CLAUSES

[325] *See* H.R.Rep. No. 111, 103rd Cong., 1st Sess. at 259-60 (1993); *CMRS Second Report and Order*, 9 FCC Rcd. at 1417-22, ¶¶ 13-29.

[326] Section 10 explicitly grants us this authority; the Congressional intent underlying section 332(c) would also permit such application of its provisions.

122. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i), 10, 11 and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 160, 161 and 332, the outstanding portions of the Petition for Forbearance filed by the Broadband Personal Communications Services Alliance of the Personal Communications Industry Association on May 22, 1997, ARE GRANTED IN PART AND DENIED IN PART to the extent discussed above.

123. IT IS FURTHER ORDERED that, pursuant to sections 1, 4(i), 226 and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 226 and 332, the Petition for Reconsideration or Waiver filed by GTE on September 27, 1993, IS DENIED.

124. IT IS FURTHER ORDERED that, pursuant to sections 1, 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and 332, the rulemaking proceeding captioned Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers, GN Docket No. 94-33, IS TERMINATED.

125. IT IS FURTHER ORDERED that, pursuant to sections 1, 4(i), 10, 11, 303(g), 303(r) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 160, 161, 303(g), 303(r) and 332, a NOTICE OF PROPOSED RULEMAKING is hereby ADOPTED.

126. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on the Notice of Proposed Rulemaking on or before **August 3, 1998**, and reply comments on or before **August 18, 1998**. Comments and reply comments should be filed in WT Docket No. 98-100. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. For each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. Send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. For further information contact Jeffrey Steinberg at 202-418-0620 or Kim Parker at 202-418-7240.

127. IT IS FURTHER ORDERED that, Parts 20 and 64 of the Commission's Rules ARE AMENDED as specified in Appendix C, effective 30 days after publication in the Federal Register.

128. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1202, 1.203, and 1.206(a).

129. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A

INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (RFA),[327] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the rules proposed in the Notice of Proposed Rulemaking (Notice) in WT Docket No. 98-XX. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.

A. Need for, and objectives of, the proposed rules:

In this Notice, the Commission proposes to consider forbearing from applying provisions of section 226 of the Communications Act (Telephone Operator Consumer Services Improvement Act or TOCSIA)[328] to Commercial Mobile Radio Service (CMRS) providers and aggregators of CMRS, as well as modifying its rules applying TOCSIA to those entities. Specifically, the Commission proposes to: (1) continue to require some form of disclosure to consumers by CMRS aggregators similar to that mandated by section 226(b)(1)(D) of the Act, although the precise nature of the disclosure may be modified; (2) forbear from requiring CMRS aggregators to post disclosure information "on or near the telephone instrument," and instead permit all or some CMRS aggregators to use some other reasonable means of disclosure; and (3) continue to require CMRS providers of operator service (OSPs) to ensure by contract or tariff that aggregators will comply with the disclosure requirements.[329]

In addition, the Commission requests comment on whether it should forbear from applying other provisions of TOCSIA in the CMRS context or whether these requirements should be modified as applied to CMRS aggregators and OSPs. These provisions include requirements that OSPs identify themselves to consumers, disclose certain information, and permit termination of calls before connection at no charge upon request; that OSPs refrain from billing for unanswered calls in areas where equal access is available and refrain from knowingly billing for unanswered calls in areas where equal access is unavailable; that OSPs avoid certain call transfer and billing practices known as "call splashing"; that OSPs make publicly available information about recent changes in their operator services; and that OSPs and aggregators ensure immediate connection of emergency telephone calls. The Commission's objective is to formulate rules that are responsive to the differences between CMRS and fixed services provided through aggregators, that avoid imposing unnecessary burdens on CMRS

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[327] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[328] 47 U.S.C. § 226.

[329] Definitions of aggregator and OSP can be found at 47 U.S.C. § 226(a)(2) and (9), 47 C.F.R. § 64.708(b) and (i), and para. 66 of the Memorandum Opinion and Order and Notice of Proposed Rulemaking, *supra*.

OSPs and aggregators, and that provide consumers who obtain CMRS through aggregators with protections comparable to those enjoyed by other consumers of CMRS.

The Notice also seeks comment on forbearance from applying other provisions of the Act to all wireless telecommunications carriers licensed by the Commission, including telecommunications carriers licensed under Part 21 (domestic public fixed radio services), Part 22 (public mobile radio services), Part 24 (personal communications services), Part 90 (private land mobile radio services), and Part 101 (fixed microwave services) of our rules. The Commission's objective is to reduce regulatory burdens upon providers of wireless telecommunications services where consistent with the public interest, and thus to foster vigorous and fair competition among these providers.

B. Legal basis:

The proposed action is authorized under sections 1, 4(i), 10, 11 and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 160, 161 and 332(c).

C. Description and estimate of the number of small entities to which rules will apply:

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules.[330] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[331] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[332] Nationwide, there are 275,801 small organizations.[333] "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[334] As of 1992, there were 85,006 such jurisdictions in the United States.[335]

In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act.[336] Under the Small Business Act, a "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its

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330 5 U.S.C. §§ 603(b)(3), 604(a)(3).

331 5 U.S.C. § 601(6).

332 5 U.S.C. § 601(4).

333 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

334 5 U.S.C. § 601(5).

335 U.S. Department of Commerce, Bureau of the Census, "1992 Census of Governments."

336 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632).

field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[337]

The Notice could result in rule changes that, if adopted, would affect all small businesses that are aggregators or providers of CMRS operator services as well as all small business that are wireless telecommunications carriers. To assist the Commission in analyzing the total number of affected small entities, commenters are requested to provide estimates of the number of small entities that may be affected by any rule changes resulting from the Notice. The Commission estimates the following number of small entities may be affected by the proposed rule changes:

Cellular Radiotelephone Service. The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[338] The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 1,000 or more employees.[339] The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, is the most recent information available. This document shows that only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[340] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. The Commission assumes, for purposes of this IRFA, that all of the current cellular licensees are small entities, as that term is defined by the SBA. In addition, the Commission notes that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. The most reliable source of information regarding the number of cellular service providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). The report places cellular licensees and Personal Communications Service (PCS) licensees in one group. According to the data released in November 1997, there are 804 companies reporting that they engage in cellular or PCS service.[341] It seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees; however, the Commission is unable at this time to estimate with greater precision the number of cellular service carriers qualifying as small business concerns under the SBA's definition.

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[337] 15 U.S.C. § 632.

[338] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

[339] U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce (radiotelephone communications industry data adopted by the SBA Office of Advocacy) (SIC Code 4812).

[340] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

[341] FCC, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997).

For purposes of this IRFA, the Commission estimates that there are fewer than 804 small cellular service carriers.

Broadband PCS. The broadband PCS spectrum is divided into six frequency blocks designated A through F. The Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years.[342] This definition of "small entity" in the context of broadband PCS auctions has been approved by the SBA.[343] The Commission has auctioned broadband PCS licenses in blocks A through F. Of the qualified bidders in the C and F block auctions, all were entrepreneurs. Entrepreneurs was defined for these auctions as entities, together with affiliates, having gross revenues of less than $125 million and total assets of less than $500 million at the time the FCC Form 175 application was filed. Ninety bidders, including C block reauction winners, won 493 C block licenses and 88 bidders won 491 F block licenses. For purposes of this IRFA, the Commission assumes that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees, are small entities.

Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded in the auctions. Given that nearly all radiotelephone companies have no more than 1,500 employees, and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

220 MHz Radio Services. Commercial licenses in the 220-222 MHz band are divided into two categories.[344] Phase I licensees are licensees granted initial authorizations from among applications filed on or before May 24, 1991.[345] The Commission has not adopted a definition of small business specific to Phase I 220 MHz licensees. Accordingly, the Commission will use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. Approximately 1,515 non-nationwide Phase I licenses and four nationwide Phase I licenses

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[342] *See* 47 C.F.R. § 24.720(b)(1).

[343] *See* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd. 5532, 5581-84 (1994).

[344] Some channels in the 220-222 MHz band are reserved for Public Safety and Emergency Medical Radio Services. Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order; Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd. 10943, 10972-79, ¶¶ 59-72 (1997). In addition, qualified entities may obtain secondary licenses to use these frequencies for fixed geophysical telemetry operations. *Id.* at 11009-12, ¶¶ 140-146. These licensees would not be affected by any rules adopted pursuant to this Notice.

[345] 47 C.F.R. § 90.701(b).

have been awarded. The Commission estimates that almost all of the holders of these licenses are small entities under the SBA definition.

Phase II licensees are licensees granted initial authorizations from among applications filed after May 24, 1991.[346] The Commission has adopted a two-tiered definition of small businesses in the context of auctioning Phase II licenses in the 220-222 MHz band. A small business is defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenue for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenue for the three preceding years of not more than $15 million.[347] This definition of small business has been approved by the SBA.[348] There have not been any auctions to date of 220 MHz licenses, and it is therefore impossible accurately to predict how many eventual licensees out of the auctions process will be small entities. Based on its experience with auctions of SMR licenses in the 900 MHz band, however, the Commission estimates that for the 908 auctionable licenses in the 220 MHz band, there will be approximately 120 applicants, of which approximately 92 will be small entities within either prong of the definition approved by the SBA.[349]

Paging. The Commission has proposed a two-tier definition of small businesses in the context of auctioning geographic area paging licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Since the SBA has not yet approved this definition for paging services, the Commission will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to *Telecommunications Industry Revenue* data, there were 172 "paging and other mobile" carriers reporting that they engage in these services.[350] Consequently, the Commission estimates that there are fewer than 172 small paging carriers. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service.[351] Accordingly, the Commission will use

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[346] 47 C.F.R. § 90.701(c).

[347] 47 C.F.R. § 90.1021(b).

[348] Letter from A. Alvarez, SBA, to D. Phythyon, FCC (Jan. 6, 1998).

[349] *See 220 MHz Third Report and Order*, 12 FCC Rcd. at 11096, Appendix A.

[350] FCC, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997).

[351] Air-Ground radiotelephone service is defined in section 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

Specialized Mobile Radio (SMR). The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years. This regulation defining "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes for purposes of this IRFA that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band, and recently completed an auction for geographic area 800 MHz SMR licenses. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. There were 10 winning bidders who qualified as small entities in the 800 MHz auction.

Offshore Radiotelephone Service. This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this IRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

General Wireless Communications Service. This service was created by the Commission on July 31, 1995[352] by transferring 25 MHz of spectrum in the 4660-4685 MHz band from the federal government to private sector use. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications.

Common Carrier Fixed Microwave Services. Microwave services include common carrier fixed,[353] private operational-fixed,[354] and broadcast auxiliary radio services.[355] Of these, only operators

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[352] *See* Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, *Second Report and Order*, 11 FCC Rcd. 624 (1995).

[353] 47 C.F.R. §§ 101 *et seq.* (formerly Part 21 of the Commission's rules).

[354] Persons eligible under Parts 80 and 90 of the Commission's rules can use private operational fixed microwave services. *See* 47 C.F.R. §§ 80.1 *et seq.*; 47 C.F.R. §§ 90.1 *et seq.* Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use an operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

in the common carrier fixed microwave service are telecommunications carriers that could be affected by the adoption of rules pursuant to this Notice. At present, there are 22,015 common carrier fixed microwave licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, the Commission will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. The Commission estimates that for purposes of this IRFA all of the common carrier fixed microwave licensees would qualify as small entities under the SBA definition for radiotelephone communications.

Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[356] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[357] The Commission will use the SBA definition applicable to radiotelephone companies; *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

Marine Coast Service. The Commission has not adopted a definition of small business specific to the marine coast service. The Commission will use the SBA definition applicable to radiotelephone companies; *i.e.*, an entity employing no more than 1,500 persons. There are approximately 10,500 licensees in the marine coast service, and the Commission estimates that almost all of them qualify as small under the SBA definition.

Wireless Communications Services (WCS). WCS is a wireless service which can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission will use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons, while it seeks SBA approval of a more refined definition.[358] The Commission auctioned geographic area licenses in the WCS service. Based upon the information obtained in the auctions process, the Commission concludes that eight WCS licensees are small entities.

In addition to the above estimates, new licensees in the wireless radio services will be affected by these rules, if adopted. CMRS aggregators will also be affected by these rules, if adopted. The Commission does not have any basis for estimating the number of CMRS aggregators that may be

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[355] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's rules. *See* 47 C.F.R. §§ 74.1 *et seq*. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points, such as a main studio and an auxiliary studio. The broadcast auxiliary microwave services also include mobile TV pickups which relay signals from a remote location back to the studio. This service is not included within the scope of this Notice.

[356] Rural Radiotelephone Service is defined in section 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

[357] BETRS is defined in sections 22.757 and 22.729 of the Commission's rules, 47 C.F.R. §§ 22.757, 22.729.

[358] The Commission defined "small business" for the WCS auction as an entity with average gross revenues of $40 million or less in the three preceding years and "very small business" as an entity with average gross revenues of $15 million or less in the three preceding years. *See* Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), *Report and Order*, 12 FCC Rcd. 10785 (1997).

small entities. To assist the Commission in analyzing the numbers of potentially affected small entities, commenters are requested to provide information regarding how many small business entities may be affected by the proposed rules.

D. Description of reporting, record keeping and other compliance requirements:

The Notice proposes no additional reporting, recordkeeping or other compliance measures and seeks to minimize such burdens for CMRS aggregators and OSPs. As noted, we propose to forbear from requiring CMRS aggregators to post disclosure information "on or near the telephone instrument," and instead permit all or some CMRS aggregators to use some other reasonable means of disclosure.

E. Steps taken to minimize the significant economic impact on small entities, and significant alternatives considered:

The Notice proposes to reduce the administrative burdens and cost of compliance with TOCSIA and the Commission's implementing regulations for CMRS aggregators and OSPs generally. This reduction of burden will economically benefit small entities within these categories. In addition, the Commission seeks comment on ways of reducing regulatory burdens by forbearing from applying any provisions of the Communications Act to wireless telecommunications carriers, including those carriers that are small business entities. We specifically request comment on whether forbearance from applying any statutory provision is appropriate with respect to smaller CMRS providers.

F. Federal rules which overlap, duplicate, or conflict with these proposed rules:

None.

APPENDIX B

LIST OF COMMENTERS AND SHORT-FORM NAMES USED

Comments on the PCIA Petition

America One Communications, Inc. (America One)
American Mobile Telecommunications Association, Inc. (AMTA)
AT&T Wireless Services, Inc. (AT&T)
Bell Atlantic NYNEX Mobile, Inc. (Bell Atlantic NYNEX)
BellSouth Corporation (BellSouth)
Cellnet of Ohio, Inc. (Cellnet)
Cellular Telecommunications Industry Association (CTIA)
Competitive Telecommunications Association (CompTel)
CONXUS Communications, Inc. (CONXUS)
General Wireless, Inc. (GWI)
GTE Service Corporation (GTE)
KCI Communications Corp. d/b/a/ One Source (One Source)
MCI Communications Corporation (MCI)
National Wireless Resellers Association (NWRA)
Nextel Communications, Inc. (Nextel)
Omnipoint Communications, Inc. (Omnipoint)
PrimeCo Personal Communications, L.P. (PrimeCo)
Rural Telecommunications Group (RTG)
SouthEast Telephone, Ltd. (SouthEast)
Sprint PCS and American Personal Communications (Sprint/APC)
Telecommunications Resellers Association (TRA)
WorldCom, Inc. (WorldCom)

Reply Comments on the PCIA Petition

AirTouch Communications, Inc. (AirTouch)
American Mobile Telecommunications Association, Inc. (AMTA)
AT&T Wireless Services, Inc. (AT&T)
BellSouth Corporation (BellSouth)
Cellular Telecommunications Industry Association (CTIA)
National Wireless Resellers Association (NWRA)
Nextel Communications, Inc. (Nextel)
Northcoast Communications, LLC (Northcoast)
Personal Communications Industry Association (PCIA)
PrimeCo Personal Communications, L.P. (PrimeCo)
Telecommunications Resellers Association (TRA)
Touch 1 Wireless (Touch 1)
US WEST, Inc. (US WEST)

Comments on the Further Forbearance NPRM

Alltel Service Corporation (Alltel)
American Mobile Telecommunications Association, Inc. (AMTA)
Applied Technology Group, Inc. (Applied)
AT&T Corporation (AT&T)
Bell Atlantic Mobile Systems, Inc. (BANM)
BellSouth Corporation (BellSouth)
Cellular Telecommunications Industry Association (CTIA)
Dial Page, Inc. (Dial Page)
E.F. Johnson Company (E.F. Johnson)
Geotek Communications, Inc. (Geotek)
Grand Broadcasting Corporation (Grand Broadcasting)
GTE Service Corporation (GTE)
In-Flight Phone Corp. (In-Flight)
McCaw Cellular Communications, Inc. (McCaw)
National Association of Business and Educational Radio. Inc. (NABER)
Nextel Communications, Inc. (Nextel)
NYNEX Corporation (NYNEX)
OneComm Corporation (OneComm)
Pacific Bell and Nevada Bell (PacBell)
SEA, Inc. (SEA)
Southwestern Bell Mobile Systems, Inc. (SBC)
The Southern Company (Southern)
United States Sugar Corporation (US Sugar)
Utilities Telecommunications Council (UTC)
Waterway Communications System, Inc. (Watercom)
WJC Maritel Corporation (WJC)

Reply Comments on the Further Forbearance NPRM

American Mobile Telecommunications Association, Inc. (AMTA)
AMSC Subsidiary Corporation (AMSC)
AT&T Corporation (AT&T)
BellSouth Corporation (BellSouth)
Cellular Telecommunications Industry Association (CTIA)
GTE Service Corporation (GTE)
In-Flight Phone Corp. (In-Flight)
McCaw Cellular Communications, Inc. (McCaw)
Nextel Communications, Inc. (Nextel)
NYNEX Corporation (NYNEX)
Pacific Bell and Nevada Bell (PacBell)
Radiofone, Inc. (Radiofone)
Southwestern Bell Mobile Systems, Inc. (SBC)
Sprint Corporation (Sprint)

US WEST, Inc. (US WEST)
United States Telephone Association (USTA)
Waterway Communications System, Inc. (Watercom)

APPENDIX C

FINAL RULES

Title 47 of the Code of Federal Regulations, Parts 20 and 64, is amended as follows:

Part 20 - COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for Part 20 is amended to read as follows:

AUTHORITY: Secs. 4, 10, 251-254, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 160, 251-254, 303, and 332 unless otherwise noted.

2. Section 20.15 is amended by revising paragraphs (c) and (d) to read as follows:

§ 20.15 Requirements under Title II of the Communications Act

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(c) Commercial mobile radio service providers shall not file tariffs for interstate service to their customers, interstate access service, or interstate operator service. Sections 1.771-1.773 and part 61 of this chapter are not applicable to interstate services provided by commercial mobile radio service providers. Commercial mobile radio service providers shall cancel tariffs for interstate service to their customers, interstate access service, and interstate operator service.

(d) Nothing in this section shall be construed to modify the Commission's rules and policies on the provision of international service under Part 63 of this chapter, except that a commercial mobile radio service provider is not required to file tariffs for its provision of international service to markets where it does not have an affiliation with a foreign carrier that collects settlement payments from U.S. carriers. For purposes of this paragraph, *affiliation* is defined in § 63.18(h)(1)(i) of this chapter.

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Part 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 is amended to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 10, 201, 218, 226, 228, 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 10, 201, 218, 226, 228, 332, unless otherwise noted.

2. Section 64.703 is amended by deleting the word "A" at the beginning of paragraph (b)(2) and inserting in its place the phrase "Except for CMRS aggregators, a".

3. Section 64.704 is amended by adding a new paragraph (e) to read as follows:

§ 64.704 Call blocking prohibited.

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(e) The requirements of this section shall not apply to CMRS aggregators and providers of CMRS operator services.

4. Section 64.705 is amended by adding a new paragraph (c) to read as follows:

§ 64.705 Restrictions on charges related to the provision of operator services.

*****

(c) The requirements of paragraphs (a)(5) and (b) of this section shall not apply to CMRS aggregators and providers of CMRS operator services.

5. Section 64.708 is amended by redesignating paragraphs (d) through (h) as (f) through (j), redesignating paragraph (i) as paragraph (l) and adding paragraphs (d), (e) and (k) to read as follows:

§ 64.708 Definitions.

*****

(d) *CMRS aggregator* means an aggregator that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises for interstate telephone calls using a provider of CMRS operator services;

(e) *CMRS operator services* means operator services provided by means of a commercial mobile radio service as defined in section 20.3 of this chapter;

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(k) *Provider of CMRS operator services* means a provider of operator services that provides CMRS operator services;

*****

Separate Statement of Chairman William E. Kennard
PCIA's Broadband Personal Communications Services Alliance's
Petition for Forbearance for Broadband Personal Communications Services

Today, the Commission takes an important step toward ensuring that the competition we are beginning to see emerge in the mobile telephony market will continue in a manner that benefits America's consumers. Based on the record presented in this proceeding, and information the Commission compiled in its Third Annual CMRS Competition Report, we wisely reject the request by the Personal Communications Industry Association ("PCIA") to forbear from core protections against discrimination and unfair dealing contained in sections 201 and 202 of the Communications Act. By rejecting this request, our decision today ensures that all American mobile telephony consumers will have the basic ability to obtain telecommunications service on no less favorable terms than other similarly situated customers, and not just those who live in markets characterized by widespread competition. Based on the centrality of these protections, which have served us well in both competitive and non-competitive contexts, it would be an abdication of our responsibility to consumers to rely simply on the workings of the market to ensure that Americans receive quality service at fair and reasonable prices.

At the same time, we take steps to ensure that prices charged by providers of mobile telephony services will continue their current downward trend by preserving the Commission's CMRS resale rule. This transitional rule, which will sunset five years after a date noted in a Public Notice issued concurrently with this Order, ensures that incumbent mobile telephony providers will be subject to price and service competition by resellers while their facilities-based competitors are building out their systems. The presence of resellers will serve to ensure that facilities-based carriers treat consumers fairly.

Our actions today also ensure that resale will continue as a viable strategy for entry into telecommunications by small and minority-owned businesses. These businesses, which often do not have the large amounts of capital needed to build out facilities, frequently are able to effectively serve niche or otherwise underserved markets. Many segments of our society would go unserved or underserved without them. Our Order ensures that resellers will continue to operate in this market in a manner that benefits consumers.

Although I reject PCIA's petition to forbear from enforcement of Sections 201, 202 and the Commission's CMRS resale rule, I would like to reiterate my commitment to Commission forbearance from unnecessary regulation. I want to emphasize my interest in forbearance from enforcing provisions of our rules that inhibit or distort competition in the marketplace, represent unnecessary regulatory costs, or stand as obstacles to lower prices, greater service options, and higher quality services for American telecommunications consumers. I welcome future opportunities to extend the Commission's exercise of its forbearance authority in furtherance of these goals and, to that end, I note the Commission's decision to adopt, as part V of this Order, a Notice of Proposed Rulemaking seeking

comments on possible forbearance from additional provisions of our rules.

Section 10 of the Communications Act gives the Commission a powerful tool by allowing the Commission to forbear from the application of virtually any regulation or any provision of the Act to a telecommunications carrier or telecommunications service, or a class of carriers or services. Congress was clear in enunciating the specific test that must be applied by the Commission in its consideration of whether to forbear from the provisions of the Telecommunications Act or our regulations.[1] In this case, the record demonstrated that forbearance should be granted with regard to several of the provisions cited by the petitioners (certain tariffing requirements for international service offered directly to customers and certain requirements of Section 226 of the Telecommunications Act, TOSCIA (Telephone Operators Consumer Services Improvement Act)). However, the record clearly demonstrated that the Commission should not forbear on a national basis from enforcing sections 201 and 202, or the resale rule at this time. One-size-fits-all forbearance in this instance would not adequately protect consumers or the public's interest in robust competition. Although the record does not support forbearance on a national basis at this time, I would welcome future petitions to forbear from the CMRS resale rule for specific geographic markets based on the factors delineated in the Commission's Order. I encourage parties seeking future forbearance to submit specific showings and particularized evidence so that the Commission can analyze fully whether their requests satisfy each part of the test prescribed by Congress.

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[1] Under section 10, we must forbear from applying any regulation or provision of the Act to a telecommunications carrier or service, or class of telecommunications carriers or services, in any or some of its geographic markets, if a three-pronged test is met. Specifically, section 10 requires forbearance if the Commission determines that:

> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
>
> (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
>
> (3) forbearance from applying such provision or regulation is consistent with the public interest.

47 U.S.C. § 160(a)(1-3).